

### **REMARKS**

Claims 1-40 are cancelled without prejudice. Claims 41, 44 and 45 are currently amended. Claims 53-59 are newly added. Therefore, claims 41-59 are presented for examination. The amendments add no new matter. Support for an inhaler comprising an actuator, mouthpiece and nozzle is inherent in the concept of an inhaler. In any case, the terms are used in several patents incorporated by reference into the present specification at, for example, paragraph [0057] of the published application. These include, for example, U.S. 6,202,643 (Sladek) at column 1, paragraph beginning line 24; U.S. 6,205,999 (Ivri et al.) at column 4, paragraph beginning on line 48; and U.S. 6,170,482 (Howlett) at column 3, paragraph beginning at line 48.

Reconsideration of the application in view of the current claims is respectfully requested and further in view of the following Remarks.

#### **I. INFORMATION DISCLOSURE STATEMENT**

Applicant thanks the Examiner for initialing form SB/08a, submitted by Applicant with the amendment dated June 23, 2009.

#### **II. INTERVIEW SUMMARY**

Applicant thanks the Examiner for the telephonic interview of October 28, 2009 with John Storella, Ed Ching and Gregory Conner. Issues of claim construction and prior art were discussed and possible claim amendments were considered.

#### **III. CLAIM REJECTIONS UNDER 35 U.S.C. § 102**

##### **A. REJECTION UNDER 35 U.S.C. § 102(E) OVER U.S. PATENT 6,056,169**

Claims 29, 31-35 and 37-40 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. patent 6,056,169 ("Bruna et al.") Applicant requests reconsideration.

Applicant has canceled the rejected claims without prejudice to pursue them in an application claiming priority hereon. Therefore, the rejection is moot. Applicant requests the Examiner to withdraw the rejection over Bruna et al.

**B. REJECTION UNDER 35 U.S.C. § 102(B) OVER U.S. PATENT 4,667,668**

Claims 30, 36 and 41-52 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. patent 4,667,668 ("Wetterlin"). Applicant requests reconsideration.

Applicant has cancelled claims 30 and 36 without prejudice, thereby rendering this rejection moot. Applicant notes that thiocyanate can be formulated as either a solid or a liquid.

A reference cannot anticipate a claim unless it shows every element of the claim. Applicant has amended claim 41 to recite that the inhaler contains a composition comprising  $H_2O_2$  and is adapted to deliver the composition as an aerosol. Wetterlin does not show an inhaler comprising  $H_2O_2$  and adapted to deliver the composition as an aerosol. Because Wetterlin does not show every element of the invention, it did not anticipate claim 41 or the claims that depend from it. Applicant requests the Examiner to withdraw the rejection.

**C. REJECTION UNDER 35 U.S.C. § 102(E) OVER U.S. PATENT APPLICATION US 2004/0028749**

Claims 29, 31-35 and 37-40 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. patent application US 2004/0028749 ("Slungaard et al."). Applicant requests reconsideration.

Applicant has canceled the rejected claims without prejudice to pursue them in an application claiming priority hereon. Therefore, the rejection is moot. Applicant requests the Examiner to withdraw the rejection over Slungaard et al.

For these reasons, Applicant respectfully requests the Examiner to withdraw the rejections for anticipation.

**IV. DOUBLE PATENTING**

Claims 29-52 stand rejected as being obvious over the claims of U.S. 6,702,998. Without acceding the propriety of this rejection, Applicant submits herewith a terminal disclaimer over U.S. 6,702,998. Therefore, Applicant requests the Examiner to withdraw the rejection.

**CONCLUSION**

In view of the amendments and remarks above, Applicant respectfully requests the Examiner to withdraw the rejections and move this case to allowance.

USSN 10/771,057

Gregory E. Conner


Response to Office Action dated August 18, 2009

Docket No.: 1004-001.CIP

The Commissioner is authorized to charge any fees associated with this filing, including the fee for submitting a terminal disclaimer, to Deposit Account No. 50-4950. If the Examiner would like to discuss any aspect of the action, he is invited to call John Storella at 510-501-0567.

Respectfully submitted,

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By: 

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